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LIMITED and ARAMID GRANTOR TRUST

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Los Angeles Superior Court

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John A. Blake, Executive Officer/Clerk
By Dorothy Swain, Deputy
DOROTHY SWAIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BC478589

ARAMID ENTERTAINMENT FUND
LIMITED, a Cayman Islands company, and
ARAMID GRANTOR TRUST, a Delaware
statutory trust,

Plaintiffs,

v.

FORTRESS INVESTMENT GROUP LLC, a
Delaware limited liability company; CF FILM
FINANCE AB LLC, a Delaware limited
liability company; RELATIVITY MEDIA,
LLC, a California limited liability company;
RELATIVITY MEDIA HOLDINGS I LLC, a
Delaware limited liability company; BEVERLY
BLVD LLC, a Delaware limited liability
company; LORD SECURITIES
CORPORATION, a Delaware corporation; and
DOES 1-100, inclusive,

Defendants.

CASE NO.

COMPLAINT FOR:

1. BREACH OF CONTRACT;
2. BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING;
3. INTENTIONAL INTERFERENCE
WITH CONTRACTUAL
RELATIONS;
4. INTENTIONAL INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE;
5. FRAUD;
6. FRAUDULENT TRANSFER
AIDING, ABETTING AND
INDUCING FRAUDULENT
TRANSFER;
8. BREACH OF FIDUCIARY DUTY;
9. AIDING, ABETTING AND
INDUCING BREACH OF
FIDUCIARY DUTY

1 Plaintiffs Aramid Entertainment Fund Limited and Aramid Grantor Trust allege for
2 their Complaint as follows:

3 4 INTRODUCTION

5 1. This is one of the greatest heist stories ever told in the movie business. It
6 involves a stunning cast of corporate characters: one of the world's largest entertainment
7 companies, the third largest bank in America, one of the world's largest hedge funds, and a vehicle
8 two of them helped bring to life in order to finance over \$1 billion worth of feature films. Behind
9 the scenes, this vehicle was ultimately hi-jacked, forcibly dismantled and ruthlessly plundered in
10 order to line the pockets of the Defendants and to knowingly deprive Plaintiffs of their rights.
11 Plaintiffs Aramid Entertainment Fund Limited and Aramid Grantor Trust bring this action to right
12 multiple wrongs -- including breach of contract, breach of the implied covenant of good faith and
13 fair dealing, intentional interference with both contractual relations and prospective economic
14 advantage, as well as fraud, fraudulent transfer and breach of fiduciary duty. Plaintiffs seek
15 restitution and damages of not less than \$44 million, or according to proof at trial.

16 17 PARTIES

18 2. Plaintiff Aramid Entertainment Fund Limited ("Aramid") is, and at all times
19 mentioned herein was, a company organized under the laws of the Cayman Islands with its principal
20 place of business in Grand Cayman, Cayman Islands. Aramid is an open-ended investment
21 company which, since 2006, has provided short and medium term liquidity to producers and
22 distributors of film, television and other media and entertainment content.

23 3. Plaintiff Aramid Grantor Trust ("AGT") is, and at all times mentioned herein
24 was, a statutory trust organized under the laws of Delaware with its principal place of business in
25 Delaware.

26 4. Defendant Fortress Investment Group LLC ("Fortress") is, and at all times
27 mentioned herein was, a limited liability company organized under the laws of Delaware with
28 offices in multiple locations including Los Angeles, California. On its website, Fortress describes

1 itself as "a leading global investment management firm."

2 5. Defendant CF Film Finance AB LLC ("CF Film Finance") is, and at all
3 relevant times mentioned herein was, a limited liability company organized under the laws of
4 Delaware. Plaintiffs allege, on information and belief, that CF Film Finance conducts business in
5 California. Plaintiffs further allege, on information and belief, that CF Film Finance is a wholly-
6 owned subsidiary of Fortress.

7 6. Defendant Relativity Media, LLC ("Relativity") is, and at all times
8 mentioned herein was, a limited liability company organized under the laws of California with its
9 principal place of business in West Hollywood, California.

10 7. Defendant Relativity Media Holdings I LLC ("RMH") is, and at all times
11 mentioned herein was, a limited liability company organized under the laws of Delaware with its
12 principal place of business in West Hollywood, California. RMH is a wholly-owned subsidiary of
13 Relativity.

14 8. Defendant Beverly Blvd LLC ("Beverly") is, and at all times mentioned
15 herein was, a limited liability company organized under the laws of Delaware with its principal
16 place of business in West Hollywood, California. Beverly is a wholly-owned subsidiary of RMH.

17 9. Defendant Lord Securities Corporation ("Lord") is, and at all times
18 mentioned herein was, a corporation organized under the laws of Delaware. Plaintiffs allege, on
19 information and belief, that Lord conducts business in California. Lord is the manager of RMH and
20 Beverly, both of which are based in California.

21 10. Plaintiffs presently do not know the true names and capacities of Defendants
22 Does 1 through 100, inclusive, and for that reason sue such Defendants under such fictitious names.
23 Plaintiffs will further amend their Complaint to show the true names and capacities of the Doe
24 Defendants when they have been ascertained.

25 11. Plaintiffs are informed and believe and based thereon allege that, at all times
26 mentioned below, the Defendants, including the Doe Defendants, and each of them, were the
27 agents, servants and employees of one another and, in doing the things mentioned below, were
28 acting within the course and scope of such agency, employment and service, and with the

1 knowledge, permission, and consent of each other.

2 12. Plaintiffs are informed and believe, and based thereon allege, that the
3 Defendants, and each of them, unlawfully conspired and acted in concert and participated, with one
4 or more of the remaining Defendants, in committing and performing the acts and conduct alleged
5 herein, and for the express and intended purpose of committing or performing the acts and conduct
6 alleged herein, all to the damage and detriment of Plaintiffs.

8 FACTS APPLICABLE TO ALL CAUSES OF ACTION

9 THE BACKSTORY

10 A. Motion Picture "Slate" Deals

11 13. Aramid was formed in 2006 and specializes in providing financing secured
12 by entertainment assets. Today, Aramid has a portfolio of loans and investments valued in excess
13 of \$180 million. In the course of the last 5 years, Aramid has provided funding for over 30
14 independent feature films and has provided separate funding to large, complex structures that, in
15 turn, provided crucial co-financing for over 50 feature films in partnership with Paramount Pictures,
16 Summit Entertainment and Sony Pictures Entertainment ("Sony"). Based on performance to date,
17 Aramid has successfully realized (or currently projects) profits on all of its co-financing deals with
18 major studios except for the one involving Sony and the Defendants.

19 14. Relativity was formed in or about 2005. Upon information and belief, from
20 2005 to 2008, Relativity's focus was on arranging financing for so-called "slate deals," complicated
21 financing vehicles set up to provide funds to major studios for the purpose of co-financing many
22 films over a period of several years. Beginning in 2008, Relativity received backing from Elliott
23 Management ("Elliott"). Prior to the Elliott investment, Plaintiffs are informed and believe that
24 Relativity did not have its own funds to invest nor did it have a principal backer to whom it could
25 exclusively bring its deals, rather than "re-inventing the wheel" each time it had a deal to sell. From
26 2005-08, most of Relativity's activity consisted of (i) negotiating with banks (or other capital
27 providers and/or underwriters) and studios in order to agree to a form of "slate deal" which could be
28 "sold" to investors and/or lenders and (ii) going out and actually finding (or supporting the efforts

1 of underwriters to find) lenders and investors willing to risk money on the deal. Plaintiffs are
2 informed and believe that Relativity sought to transform itself from a “passive” participant in
3 setting up slate deals to an “active” one that would be thought of as somehow responsible for the
4 success of the deals, not merely the source of their initial financing. Plaintiffs further allege, on
5 information and belief, that Relativity’s CEO Ryan Kavanaugh (“Kavanaugh”) negotiated a
6 “producing” credit for himself on films financed in whole or in part through Relativity’s slate deals.
7 Plaintiffs are informed and believe that Kavanaugh wanted people to believe that he really was “the
8 producer” of such films in spite of the fact that he never provided any actual producing services.

9 15. Relativity holds itself out to the market as a successful film financier,
10 producer and distributor. Relativity describes itself on its website as a “next-generation studio
11 engaged in multiple aspects of entertainment, including full-scale film and television production and
12 distribution, [and] the co-financing of major studio film slates...”¹ On the same web page,
13 Relativity touts its own alleged success: “To date, Relativity has produced, distributed, and/or
14 structured financing for more than 200 motion pictures. Released films have accumulated more
15 than \$17 billion in worldwide box office receipts. ... Thirty-eight of the company’s films have
16 opened to No. 1 at the box office. Relativity films have earned 60 Oscar nominations ... Sixty-two
17 of Relativity’s films have each generated more than \$100 million in worldwide box-office receipts.”

18 16. All major studios have come to rely on slate financing to manage the amount
19 of cash they spend on their own movies and the risk associated therewith. By one estimate, more
20 than \$15 billion in third-party capital entered the movie business through slate deals between 2004
21 and 2008.² Armed with co-investment funds from slate vehicles, major studios are able to (i) share
22 risk in a way which helps manage volatility; and (ii) in some instances, actually make more movies
23 than they would if they only relied on their own funding capacity – which is often restrained or
24 capped by the media conglomerates that own the major studios. Today, each major studio has at

25
26 ¹ Available at <http://www.relativitymediallc.com/about.asp>.

27 ² “The Skinny on Film Financing: Investors Pull Back the Curtain,” February 27, 2011,
28 *FINalternatives*, available at: <http://www.finalternatives.com/node/15656>.

1 least one slate financier on whom they have principally come to rely for this form of finance. For
2 example, Paramount had the “Melrose” financings (named for the street in Hollywood where the
3 studio lot is located, 5555 Melrose Avenue); Fox had three different versions of the Dune
4 financings, which included “Avatar,” the biggest grossing film of all time; Warner Bros. partnered
5 with Legendary Pictures, which helped finance both of the “Dark Knight” sequels to the Batman
6 franchise as well as such hits as “Inception” and “The Hangover.”

7 **B. The Beverly Deal**

8 17. In 2007, Relativity began to work with the executive team at Sony on the
9 “Beverly Blvd” motion picture slate financing (the “Beverly Slate”), which was to be its most
10 ambitious slate financing to date.³ Relativity boasted to Plaintiffs and others that the Beverly Slate
11 represented a watershed event in the evolution of slate finance, because it conferred special rights
12 on investors which had never been granted before. In previous slate deals, the studio was able to
13 pick and choose which films to allow into the slate jointly financed with outside investors (*i.e.*,
14 “cherry picking”), and as a result many of the more successful motion picture franchises were
15 excluded, leading to an unfair advantage for the studio. In the Beverly Slate, the playing field was
16 to be leveled. Excluding sequels to previously released pictures and animated films, Sony agreed to
17 give the Beverly Slate the option of selecting *any* of its forthcoming films (within a defined budget
18 range, so that “mega-budget” risk could not be forced on the slate investors), and it was Relativity –
19 serving as the “Film Selection Agent” on behalf of the slate investors – which would decide which
20 films to exclude. Relativity referred to this feature of the deal as “reverse cherry-picking” and
21 proudly hailed it as a great equalizer between slate investors and the studios. Some mainstream
22 reporters did not put any emphasis on this definitional nuance and just called it “cherry-picking”:

23 “This was an arrangement in which Relativity had agreed to co-finance as
24 much as 75 percent of the films that Universal would produce between last
25 year and 2015 with the incentive of being able to look at the studio’s entire
production roster and cherry-pick the films that appeared most likely to
become box-office successes.”⁴

26 ³ In fact there are two versions of Beverly Blvd, one at Sony and at one Universal. Plaintiffs’ claims
27 arise from the Beverly Blvd deal that funded Sony pictures.

28 ⁴ “Theory of Relativity,” March 2010, *Vanity Fair*. This quote actually refers to Beverly’s “twin

1 18. By gaining the influential ability to serve as the Film Selection Agent and
2 control which films would be excluded, Relativity inched away from being a passive arranger of a
3 slate investment to an active "film picker," ostensibly qualified to act in this capacity, Kavanaugh
4 would later assert, due to a financial model the company developed. Commenting on the role
5 Relativity's allegedly proprietary financial model played in picking films, Kavanaugh said:
6 "Ultimately, it's a tool that tells us that if the movie would have lost money a certain percentage of
7 the time, then it's too risky." He further said: "The irony of it is, a lot of people come to us and
8 say, 'We hear you have this magic movie-picking system.' And it's not. It's a movie-rejection
9 system. ... If we creatively love a project, but the model says it's not going to work, we probably
10 won't proceed ... if the model says the project is great, but we don't like it creatively, we will not
11 move forward." *Id.* As part of the Beverly Slate, Sony was obligated to present *all* of its qualifying
12 "go" pictures to Relativity,⁵ which, in turn, had the obligation pursuant to the Co-Financing
13 Agreement between Beverly and Sony (the "Co-Financing Agreement") of selecting 75% of those
14 films as "Designated Pictures" for which Beverly would then fund half the production cost. As an
15 example, if Sony presented Beverly with 12 pictures during any given year of the 5-year
16 "Submission Term" (as that term was defined in the deal documentation), Relativity had both the
17 right and the obligation to use its best judgment to select at least nine pictures for co-financing by
18 Beverly.

19 19. The capital structure for the Beverly Slate co-financing vehicle was built to
20 last. At the time, it was one of the largest slate deals ever announced, designed to fund up to 45
21 pictures over a five-year period. To do this, Beverly would contribute over \$500 million and Sony

22
23
24 sister," a deal set up at Universal, but the point about the feature of active film selection is of equal
importance to both deals.

25 ⁵ Qualified films were defined as (a) feature-length films, (b) with a budget between \$25-200
26 million, (c) intended for domestic wide release (1,000+ screens), (d) in English, (e) in color, (f) with
27 a maximum "R" rating, and (g) released theatrically on or after 5/1/07 by Sony's mainstream
domestic label. Sequels to previously-released pictures and animated films were specifically
28 excluded.

1 would put up a matching amount per picture in order to fund the slate.⁶ Together, Sony and Beverly
2 would have enough capital to fund more than \$1 billion worth of pictures – all of it earmarked
3 purely for production cost.⁷ If each film cost \$100 million, simple math suggests Beverly could
4 have co-financed a slate of at least 10 pictures, but in fact 10 pictures would have only been the bare
5 minimum. The arrangements with Sony provided that proceeds to investors from distribution of
6 each film would be reinvested over time, thus allowing the vehicle to critically “double down” on
7 future opportunities and extend the life of the deal (and its chances of success). For every dollar
8 derived from the exploitation of co-financed pictures, Sony deducted a distribution fee and certain
9 expenses. The balance was split with Beverly for each picture and Beverly would then let its share
10 of distributions, after paying certain administration costs, roll back into the pool of capital available
11 to continue funding pictures. Under the natural life of the deal as set forth in the relevant
12 agreements, this arrangement was intended to continue until the earlier of (i) May 2013, the five-
13 year anniversary of the first funding of a picture in the deal; (ii) the completion of 45 pictures (*i.e.*,
14 in the event the cycle of producing and releasing films was ahead of the projected five-year
15 schedule); or (iii) the point in time (if ever) when Beverly simply ran out of money (*i.e.*, from
16 severe underperformance of the pictures) and could no longer meet its co-financing obligations.
17 Third party analysis performed by one of the most respected independent valuation experts in the
18 entertainment industry, The Salter Group, suggested the odds of the Beverly Slate so massively
19 underperforming that it actually ran out of money early were extremely remote and Relativity,
20 Beverly (as “Issuer”) and Citi all acknowledged this as only a remote possibility at the time Aramid
21 invested in the deal. Put another way, the Beverly Slate deal had an outside stop date five years out
22 and it was otherwise envisioned to terminate earlier only if performance was disastrously poor or

23
24 ⁶ As presented to Aramid in 2008, the \$555 million consisted of \$375 million in senior notes, \$120
25 million in mezzanine notes and \$60 million in “equity” which had been loaned to Kavanaugh and
26 Relativity and secured by their share of fees and income in connection with forthcoming films.
Subtracting the approximately \$22 million in closing costs, the net amount available to fund
pictures was approximately \$533 million.

27 ⁷ Sony paid for the cost of marketing and releasing the pictures, but recouped these expenses in
28 priority.

1 the submission and production process was particularly speedy and efficient.

2 20. In order to attract investors, it was of the essence that the Beverly Slate would
3 co-finance a large number of motion pictures. Because the movie business is a hit-driven one, the
4 ability to extend the life of the slate in an attempt to capture “the winner that pays for the losers”
5 was a frequent concern to investors in the Beverly Slate, particularly as the slate progressed. This
6 basic tenet is known to anyone who has participated in slate financings, including all the
7 participants in the Beverly Slate.

8 **C. Funding the Beverly Deal**

9 21. Relativity itself did not have \$555 million with which to capitalize the
10 Beverly Slate, nor did it wind up investing any of its own money in the Beverly Slate. Instead, it
11 convinced Citibank, N.A. and its affiliates (collectively, “Citi”) to either solicit the funding or put
12 up the entire amount itself. Relativity created Defendants RMH and Beverly as new subsidiaries for
13 this specific purpose, and those “special purpose entities” acted as the issuers and guarantors,
14 respectively, of securities sold to investors and/or lenders in the deal.⁸ Citi, which solicited funds on
15 behalf of the Issuer, acted as the underwriter in the offering and agreed to issue a funding
16 assurances letter directly to Sony in the amount of \$525 million (the “FAL”) to guarantee Beverly’s
17 co-financing obligations. In the event that not a single investor was willing to put up a single dollar,
18 Citi agreed to put up at least \$525 million. Without this in place (prior to any outside investors
19 coming in to the deal), Sony would not have entered into the deal. Millions of dollars in fees were
20 to be earned regardless of whether Citi brought in the money from third parties or funded it itself
21 and, on information and belief, approximately \$14.7 million of those fees ultimately went to Citi.

22 22. The Beverly Slate’s capital structure was comprised, not unlike other Citi
23 offerings, of three tiers. First “in line” were the Class A Notes, which represented the senior
24 secured loan, or the category of notes which would eventually be entitled to recoup in priority to
25 other classes. Such notes would earn the lowest (but comparatively safest) return. Next were the

26 _____
27 ⁸ Plaintiffs are informed and believe that Relativity, Beverly and RMH are neither FINRA registered
28 nor otherwise qualified in the United States with financial regulators to issue securities and never
have been.

1 Class B Notes, generally referred to as the “mezzanine notes,” which earned a far greater (though
2 capped) return, but had to wait for the senior to be repaid before they could earn anything at all.
3 Crucially, because the holders of the mezzanine notes could only earn a return if the senior notes
4 were repaid in full (including with interest), the holders of the mezzanine notes were particularly
5 reliant on those features of the deal which sought to prevent the Beverly Slate from being artificially
6 or prematurely terminated and which otherwise extended the general life of the deal so as to give
7 the slate financiers more precious “at bats” from which to generate a major hit. The third tier
8 consisted of the Class C Notes, further sub-divided into Class C-1 and C-2. All of the Class C
9 Notes were subordinate to both the Class A and Class B Notes and may be thought of as a form of
10 preferred equity since they represented the first payout after the debt instruments were retired.
11 Finally, in the event the slate performed to such an extent that proceeds available for distribution
12 exceeded amounts owed to the A, B and C classes, there was a fourth class (the “Class D Notes”),
13 which had rights to 100% of any further moneys. Upon information and belief, Citi was unable to
14 place any of the Class D Notes.

15 23. Extensive analytics were performed by Citi, and further reviewed and
16 validated by a third party, The Salter Group, with regard to a variety of questions, including both
17 how many films the Beverly Slate would likely be able to fund and what the likelihood of each
18 layer of the capital structure actually earning a return might be. Specifically, a detailed financial
19 model was created by Citi to reflect the investment terms and the capitalization of the Beverly Slate
20 and a data set including actual performance of all of Sony’s pictures from the preceding five years
21 was used to populate a “Monte Carlo” simulation, a method used by financial analysts who wish to
22 construct “stochastic” or probabilistic financial models as opposed to more traditional static and
23 deterministic models. In order to analyze the characteristics of the Beverly Slate’s cash flows, the
24 various components of cash flow were built into the model, incorporating any correlation as well as
25 mathematically reflecting certain “random characteristics.” These results were then combined in a
26 histogram of resulting cash flows, each reflecting a different level of the Beverly Slate’s probability
27 distribution. From this, the average resulting cash flow of the potential investment – as well as its
28 volatility and other sensitivities – were observed. This distribution allows, for example, for an

1 estimate of the probability that the overall project – that is, that the slate as a whole – will have a
2 return on investment (ROI) greater than zero (or any other value), as well as being able to generate a
3 similar conclusion for any particular tier of capital. This metric of potential performance, especially
4 useful to someone interested in a particular class of notes, was known as an “Exceedence
5 Probability.” In a revision to their Confidential Information Memorandum, Citi conveyed revised
6 analytics to Aramid on June 27, 2007, showing that a “Monte Carlo” simulation showed that if
7 10,000 iterations of the Beverly Slate were run using the capital and investment terms of the
8 Beverly Slate deal (as then proposed), the expected return to the mezzanine Class B Notes, after
9 recoupment of capital, would be 20% or greater in 90% of all cases – or put another way, the
10 Exceedence Probability of the mezzanine note holders achieving a 20% internal rate of return (IRR)
11 was 90%.

12 24. Under the terms of the Beverly Slate deal, Relativity was to be paid \$1
13 million per picture as a “producing fee” plus 2% of the gross receipts of each film in the slate
14 (meaning off the “pure top” with no deductions) as a “gross participation.” These amounts were
15 payable to two wholly-owned Relativity subsidiaries: Relativity Production LLC (“Relativity
16 Production”) and Relativity Distribution LLC (“Relativity Distribution”). Plaintiffs are informed
17 and believe that, as the majority owner of Relativity, Kavanaugh stood to benefit more than anyone
18 else from the Beverly Slate transaction. Regardless of whether Kavanaugh or anyone else from
19 Relativity read a script, visited a set, or rendered any producing or other services whatsoever, these
20 “producing” fees and “gross participations” were to be paid to Relativity’s subsidiaries. That meant
21 as much as \$45 million in “producing fees” alone over five years. If the slate generated \$3 billion
22 in receipts, which was entirely possible based on an analysis of historical results, that would have
23 meant an additional \$60 million paid to Kavanaugh and Relativity – or over \$100 million in fixed
24 fees and contingent gross participations.⁹ Relativity and Kavanaugh quickly borrowed from Citi
25 against these “receivables” and used the money from those loans to “purchase” the Class C equity
26

27 ⁹ As of the date of this complaint, the Beverly Slate has generated gross receipts in excess of \$3.7
28 billion.

1 in the Beverly Slate. Plaintiffs are informed and believe that Kavanaugh also used these funds to
2 finance the operations of Relativity, which he continued trying to morph into a "real" producer.
3 Plaintiffs are informed and believe that when all was said and done, Kavanaugh had negotiated his
4 richest slate deal ever for a party not contributing any direct equity investment or otherwise sharing
5 in the capital risk of those who invested hard dollars.

6 **D. Aramid's Investment**

7 25. Plaintiffs are informed and believe that Citi and Relativity expected a
8 successful offering of the Class A and Class B Notes, particularly given the favorable terms
9 Kavanaugh touted as making the Beverly Slate the best slate deal to hit the market to date. Citi was
10 well equipped to sell the Beverly Notes, which were classified on Citi's balance sheets at the time
11 as "corporate loans," of which Citi held over \$10 billion worth by year's end.¹⁰ In 2007, Citi's
12 syndication desk had been one of the drivers of a 28% year-on-year increase in revenues.¹¹ The
13 syndication desk is capable of handling a hundred or more securities offerings in any single year
14 and is the primary distribution channel for the sale of all its debt securities to institutional buyers,
15 ranging from those based on oil and natural gas to, in this case, movie slate deals. It was this
16 powerful and important unit that was tasked with the job of syndicating the Notes. Beginning in
17 early 2007, a wide range of investors and lenders were courted, including Aramid.¹²

18 26. By March 2008, 14 months after first approaching Aramid, Citi had not sold
19 a single Note, despite the continuing efforts of its syndication desk. In part, this was related to
20 Citi's effort to first seek a way to "wrap" the Class A Notes with a form of insurance through
21 Ambac Assurance Corp., a decision which took up much time and was later reversed (which

22 ¹⁰ See Citi's Annual Report for 2008, p. 53. As Citi described these holdings in its most recent
23 (2010) Annual Report, Corporate loans (net of allowance for loan losses) increased by \$26 billion,
24 or 16%, during 2010, primarily due to the \$28 billion of Corporate loans consolidated as of January
25 1, 2010 as a result of the adoption of SFAS 166/167. The majority of the loans consolidated were
26 Citi-administered asset-backed commercial paper conduits classified as "loans to financial
27 institutions." *Id.* at p. 54.

28 ¹¹ See Citi's Annual Report for 2008, p. 36.

¹² Aramid was first approached in or about January 2007.

reversal also ate up time). However, Citi's commitment of at least \$525 million – and its purchase of the Notes – had already closed in November 2007, so there was considerable and mounting pressure in early 2008 for Citi to either begin funding without syndicating the Notes, or take whatever steps were necessary to bring in additional buyers.¹³ Throughout this period, Citi had maintained a continuing dialogue with Aramid and occasionally offered new and/or improved terms. In March 2008, Citi presented an offer that Aramid was willing to consider more closely. The offer included an 18% interest rate on the Class B Notes and a separate facility by which Citi would loan Aramid some portion of that interest as it accrued.

27. On or about March 31, 2008, Aramid purchased \$22 million worth of the Class B mezzanine notes (out of a total of \$120 million in Class B Notes issued) bearing 18% interest. At the time of Aramid's purchase of the notes, in order to further induce Aramid to commit to the purchase, Citi agreed to either increase the interest rate to 21% or buy back the notes from Aramid and ultimately, as of July 1, 2009, the interest rate was in fact increased to 21%. The remaining \$98 million in Class B or "mezzanine" Notes were not otherwise syndicated and, as a result, were held by Citi on its own balance sheet. As part of the transaction, Aramid created AGT as a separate entity to hold the Notes. In connection with its investment, AGT entered into a Note Purchase Agreement and various other agreements. Pursuant to those agreements, AGT is entitled to receive payments of principal and interest on its Class B Notes. Those payments are to be funded by the proceeds of motion pictures co-financed by Beverly. AGT's receipt of such payments is dependent upon the success of the slate of motion pictures co-financed by Beverly. In the event the motion pictures co-financed by Beverly do not generate sufficient revenue at any given time for Beverly to make the required interest payments, the interest due is to be added to the value of the notes, or "rolled up."

¹³ Citi described this type of situation in the risk disclosures contained on p. 79 of its 2010 Annual Report: "In addition, Citigroup extends large commitments as part of its credit origination activities. Citigroup's inability to reduce its credit risk by selling, syndicating or securitizing these positions, including during periods of market dislocation, could negatively affect its results of operations due to a decrease in the fair value of the positions, as well as the loss of revenues associated with selling such securities or loans."

28. Pursuant to the terms of the Film Selection Agreement by which Relativity served as the Film Selection Agent and decided which films would be co-financed (and which would be “excluded”), each noteholder had the right to participate in a quarterly meeting to review all of the film submission materials with Relativity.

E. The Importance of the Beverly Slate Deal to Relativity

29. Plaintiffs allege, on information and belief, that while Relativity had publicly portrayed its slate deals as successes, what Relativity hid from the public until recently is that, with one exception, its previous deals had performed so poorly that equity investors in each deal lost substantially their entire investment and many lenders involved in the deals suffered impairment. This is not a fact Relativity has ever admitted publicly, but it is true. It is also one Kavanaugh has been seeking to put in the rear view mirror. As The Hollywood Reporter wrote in a portrait of Kavanaugh late last year:

“Kavanaugh is already planning to phase out financing entire studio slates. His current deal at Sony¹⁴ is likely to end when their contract expires in 2012, but Kavanaugh doesn’t seem to mind. Relativity, he says, wanted better terms.”

30. Plaintiffs allege, on information and belief, that all of Relativity’s deals are directed by Kavanaugh: there is no outside influence other than the ups and downs of commercial negotiation; all major decisions relating to slate deals within Relativity roll up to him and Kavanaugh was at all times personally steering the Beverly Slate as he had the previous slate deals. In fact, Plaintiffs are informed and believe that Relativity has struggled to retain other top executives over the years as a result of Kavanaugh’s need for absolute control, his inability to sustain sources of funding (and operational liquidity) and his unsuccessful attempts at transforming Relativity into something legitimately competitive with major studios. In the past year alone, Relativity has lost several executives, many after being with the company for just a short time. For example, as summarized in a December 15, 2011 article in *The Hollywood Reporter*: “In October, Brian Edwards resigned as the company’s COO after just five months. The previous month, Joe

¹⁴ *I.e.*, Beverly Blvd.

1 Matukewicz, its senior vp acquisitions, left to join Sony Pictures Worldwide Acquisitions. The
2 company also has lost Bill Sutman, its CFO; Peter Adeo, president of marketing and distribution;
3 and Michael Joe, who had been president.” To be added to this list of senior defections just before
4 the Christmas break last year was the news that President and Chief Financial Officer Steve
5 Bertram, the former President of Business Operations for Paramount Home Entertainment, was
6 exiting his post, too. Plaintiffs are informed and believe that within less than a year, Kavanaugh
7 had lost Bertram, Joe and Edwards, three particularly high profile and respected executives whom
8 he had courted to leave their careers at real studios (Paramount, Dreamworks and Universal) to
9 come join Relativity. Throughout the fall of 2011, when the acts material to this Complaint played
10 out, Plaintiffs are informed and believe that Kavanaugh was constantly contending with these
11 crushing personnel issues. To make matters worse, Plaintiffs are further informed and believe that
12 2011 was a year of acute financial distress for Relativity, which began in large part with the poor
13 performance of its “other” Beverly slate deal (the one at Universal) – a deal that failed to sell in the
14 marketplace but which Relativity had “sold” to its first and only principal backer, Elliott, three years
15 earlier.

16 31. Even with key talent hemorrhaging from the executive suite, Plaintiffs are
17 informed and believe that Relativity’s rank and file had ballooned to over 200 employees (and its
18 fixed expense line swelled accordingly). Plaintiffs are further informed and believe that the massive
19 overhead was the result of two unprofitable acquisitions undertaken in furtherance of Kavanaugh’s
20 mission to transform the company into a “real” domestic distributor. The first was the acquisition
21 of Rogue Pictures from Universal (a deal Plaintiffs allege, on information and belief, was only made
22 possible by the “seller-financing” offered by Universal to move Rogue off its books in a timely
23 fashion) and the second was the acquisition of the short-lived Overture Films, pursuant to which
24 Plaintiffs are informed and believe that Relativity had agreed to absorb significant overhead
25 commitments too risky for parent company Liberty Media. Plaintiffs are informed and believe that
26 by 2011, the company was in a financially precarious situation with a bleak outlook: Kavanaugh
27
28

1 and Relativity had lost critical financial backing from Elliott,¹⁵ suffered departures en masse from
2 within the senior ranks and watched costs soar from ill-fated acquisitions. Cut off from funding by
3 Elliott and faced with the need to finance releasing costs for several additional motion pictures
4 (beyond the ones Elliott had committed to), Plaintiffs are informed and believe that Kavanaugh
5 turned to Colbeck Capital ("Colbeck") for what press reports called "an emergency loan" of \$200
6 million. On information and belief, Plaintiffs allege that Kavanaugh and Relativity were in such
7 dire straits in the fourth quarter of 2011 that they agreed to a high rate of interest on the Colbeck
8 loan which was convertible, at Colbeck's election, into equity in Relativity (based on a valuation
9 favorable to Colbeck). Plaintiffs are informed and believe that taking the money from Colbeck only
10 worsened Relativity's financial distress since by fall 2011, any incoming moneys were fully
11 pledged to Relativity's creditors, Relativity was falling behind on payments to rights holders, and its
12 two principal lenders, Comerica and Union Bank, refused to extend any further credit, while at the
13 same time Kavanaugh still had to find a way to somehow make payroll for over 200 employees.¹⁶
14 Plaintiffs allege upon information and belief that what amounted to functional insolvency made
15 Kavanaugh and Relativity particularly receptive to overtures from Fortress.

16 ACT I: THE SET-UP

17
18 A classic "heist" film is structured in three acts: (1) the set-up, (2) the
19 heist itself, and (3) the aftermath, which often involves the unraveling
20 of the plot. Acts I and II have already been written in this case, but the
21 outcome of Act III is still up in the air. Aramid has brought this action
22 to ensure that Act III ends with justice.

23 A. The Value of Aramid's Investment

24 32. In fall 2011, Beverly had co-financed 18 motion pictures distributed by Sony.

25
26 ¹⁵ Plaintiffs are informed and believe that Elliott agreed to fund various releasing commitments of
27 Relativity through the fall debut of "The Immortals," but wouldn't commit to anything beyond that
28 without major concessions from Kavanaugh (who refused to give in or give up control).

¹⁶ *Los Angeles Times*, Nov. 12, 2011.

1 Aramid continued to hold the Class B Notes, which had been accruing interest at 18% from the date
2 of acquisition and at 21% as of July 1, 2009. Based on the structure of the deal and numerous
3 representations from both Citi and Relativity which are detailed below, Aramid had been led to
4 believe that Beverly had the capacity to co-finance at least 5-10 additional films. Had the Beverly
5 Slate's funding mechanism been allowed to run its natural course – or better yet, had Aramid been
6 allowed the opportunity to extend and/or improve the terms of the Beverly Slate without outside
7 interference or restraints – its investment would have had the greatest possible chance of fulfilling
8 its Exceedence Probability and would have not only repaid its principal but also the full amount of
9 its accrued interest. But behind the scenes and unbeknownst to Aramid, the wheels were already in
10 motion for a daring heist that would allow Fortress and Relativity to make off with nearly \$100
11 million while destroying the value of Aramid's investment entirely. As of Dec 31, 2011, the value
12 of Aramid's investment, including accrued interest and principal, was already \$44 million.

13 **B. Fortress Gains Access to Aramid's Confidential Information**

14 33. In March 2010, Fortress, one of the largest groups of funds in the world, was
15 one of two financial institutions invited by Aramid to perform confidential due diligence on the
16 Aramid portfolio, then valued at approximately \$250 million. Fortress signed a non-disclosure
17 agreement (the "NDA") with Aramid. The NDA provided, among other things, that Fortress agreed
18 to "treat all the Proprietary Information as private and confidential and safeguard it accordingly,"
19 and that Fortress would use the information it obtained "only for the purpose of evaluating and
20 negotiating the Proposed Transaction ... *and for no other purpose.*" The term of the NDA runs for
21 three years and it contains an exclusive choice of forum clause for California and a California
22 choice of law provision.

23 34. Fortress commenced due diligence on March 12, 2010, then later insisted on
24 a window of "exclusivity" (meaning Aramid would not be able to talk to any other potential buyer
25 for a period of time, in this case 30 days) and signed an "exclusivity letter," this time on behalf of
26 subsidiary Fortress Credit Corp. and its "affiliated funds." By virtue of its exclusive and
27 confidential review, Fortress had access to voluminous information and sensitive details as to
28 Aramid's portfolio, including Aramid's investment in the Beverly Slate and all of the Beverly Slate

contracts, as well as Aramid's confidential models and forecasts related to the Beverly Slate. At the point in time when Fortress was ostensibly "kicking the Aramid tires," the Beverly Slate had co-financed 14 pictures. Fortress and their advisors pored over the contracts furnished by Aramid; however, the key information Fortress needed was Aramid's analysis of the documents, in particular Aramid's insights into the Beverly Slate. Indeed, Fortress's expert advisors on its potential transaction with Aramid, Nan Logan and Laura Fazio, stated to Aramid in an email dated April 20, 2010 that "I have to admit it was a little difficult to work through the folders without prior knowledge of how the loans work" and "we look forward to your thoughts" with respect to "the challenges facing us valuing the Beverly asset."¹⁷ In response, Aramid provided Fortress and its advisors with detailed explanation, commentary and analysis regarding the Beverly Slate in multiple conversations over the course of several months. Aramid explained how the Beverly Slate deal funding mechanics, film selection and distribution of proceeds worked to Fortress, thus helping Fortress "connect the dots" and make sense of the complicated series of agreements governing the Beverly Slate. At Fortress's request, Aramid also walked Fortress through the analysis prepared by The Salter Group. After receiving this knowledge and guidance from Aramid, Fortress allowed the exclusivity period to lapse without submitting even a tentative offer relating to the ostensible purpose for which they had entered into the NDA. Aramid found this odd given the amount of time spent by Fortress and its advisors reviewing the Fund's information, and even more so in retrospect since a potential purchaser with billions in assets under management did a similar level of diligence and subsequently submitted a detailed indicative offer. In declining to make an offer, Fortress managing director Ian Schnider cited two reasons: (i) the "unpredictability" of the Beverly Slate cash flows (from then-unreleased pictures), and (ii) "bandwidth" constraints within Fortress as they were in the process of attempting to acquire Miramax from Disney.¹⁸ These same reasons were cited to Aramid by Fortress's advisor, Laura Fazio. On May 19, 2010, Schnider acknowledged the

¹⁷ Years earlier, as head of global investment banking for technology, media and telecommunications at Dresdner Bank, Fazio had been the one to underwrite Kavanaugh's "Gun Hill" slate deal.

¹⁸ Miramax eventually sold to a group led by Colony Capital in or around December 2010.

1 expiration of the Fortress exclusivity period (which officially happened six days earlier on May 13,
2 2010), but Fortress continued to perform diligence and represent that they would be making a
3 proposal to Aramid to purchase some or all of its assets. On June 8, 2010, without ever making any
4 offer, the Fortress team advised Aramid that Fortress had either returned or destroyed all
5 confidential information, other than copies retained on its server in compliance with its document
6 retention policy.

7 35. Plaintiffs are informed and believe that Fazio continued to advise Fortress,
8 which was still intent on acquiring interests in slate deals (so long as they could be had at a
9 discount). That fall, Plaintiffs are informed and believe that Fazio advised Fortress on a deal that
10 allowed the management of Legendary Pictures – the principal slate financier to Warner Bros. – to
11 buy out its equity investors and Fazio was paid a success fee for doing so. Upon information and
12 belief, after that deal Fortress had acquired its first position in a “secondary trade” for slate
13 financing and was looking for more. Upon information and belief, Fortress had its eye on the
14 Beverly Slate asset, but was not quite ready to pounce because Fortress had determined, based in
15 part on its review of Aramid’s confidential materials and Aramid’s “thoughts” and analysis on the
16 Beverly Slate solicited by Fortress (and provided in detail by Aramid), that in order to create a trade
17 for itself with the highest possible value and likelihood of success, Fortress could better accomplish
18 its goals by waiting until closer to the end of the Submission Term, at which point Sony and
19 Relativity might be amenable to a transaction which would reap a high reward to all of the Beverly
20 Slate parties, *except Plaintiffs*. In short, after studying the design of the safe, Fortress focused on
21 the timing of the heist.

22 **C. Citi Looks to Sell its Position in the Beverly Deal**

23 36. Meanwhile, Citi had fallen on hard times. Following the global credit crisis
24 that ensued after the collapse of Bear Stearns in August 2008, Citi’s financial condition deteriorated
25 to the point where it required a government bailout. As reported in *The Wall Street Journal* on
26 November 24, 2008, the government agreed to help Citi “absorb potentially hundreds of billions of
27 dollars in losses” by injecting \$45 billion worth of fresh capital in two installments. Roughly a year
28 later, in December 2009, Citi announced that it would begin paying back the government loan it had

1 taken during the crisis. It ultimately repaid about half of the loan (approximately \$20 billion) and
2 converted the balance to equity. By December 2010, after another year had passed, the government
3 finally shed the last of its equity holdings in Citi.

4 37. At the beginning of 2011 – its first year without the long arm of the Federal
5 government overseeing its activities “from within” – Citi took a variety of measures to continue
6 shoring up its balance sheet, slim down liabilities and regain its competitive footing. This included
7 disposing of certain media loans, considered internally to be riskier than other asset classes and not
8 worth holding in financially challenging times.

9 38. As part of this effort to shore up or dispose of its media-based credit risk, in
10 or around the fourth quarter of 2010, Citi notified Aramid that it had unsuccessfully attempted to
11 negotiate a restructuring and/or extension of the term of the Beverly Slate. Part of the reason Citi
12 was unsuccessful was because Sony refused to let Citi off the hook for its continuing funding
13 obligations. In addition to the \$555 million that had been raised at closing, Citi as underwriter
14 agreed to issue the FAL in favor of Sony which required Citi to (i) ensure that not less than \$525
15 million was available to fund Beverly’s co-financing commitments (this was *not* an issue after
16 financial close) and (ii) to ensure that Beverly had sufficient funds to meet its co-financing
17 obligations through at least the first quarter of 2012 (this *was* an issue and depended fundamentally
18 on film performance). The FAL was thus “hackstop” protection for the Beverly Slate and its
19 investors and another key feature of the deal that Aramid relied on. The statistical analysis provided
20 by The Salter Group suggested that \$525 million of capital would be sufficient to fund as many as
21 45 pictures, but that was a piece of qualified analysis for Beverly’s benefit (not Aramid’s) and it
22 wasn’t a guaranty. The FAL *was* a guaranty – a promise from Citi that sufficient funds would be
23 available so that the slate would not collapse under the weight of poor performance before it had a
24 chance to recover on the strength of better performing films. The FAL was thus a form of “cut
25 through” or hackstop to the Beverly Slate which gave comfort to everyone participating in the deal
26 that, no matter what happened – or how disastrous actual film results were – the Beverly Slate
27 would continue accepting submissions through at least the first quarter of 2012, and funding
28

1 “Designated Pictures” through May 2013.¹⁹ Upon information and belief, Sony would not
2 restructure or extend the term of the Beverly Slate when approached by Citi because Sony had no
3 incentive to give up the benefit of the FAL. In short, Sony was not willing to release Citi from that
4 obligation.

5 39. In the second quarter of 2011, in a series of phone conversations, Citi
6 informed Aramid of Citi’s failure to reach an agreement with Sony about a restructuring and/or an
7 extension. As a result, Aramid approached Citi to discuss options for extending the term of the
8 transaction, including replacing Citi in the deal with an alternative senior financier that would not
9 only assume the FAL, but also extend the term of the Beverly Slate, resulting in investors gaining
10 more “at bats” from which to generate one or more portfolio-balancing “hits.” Aramid and its
11 advisors were highly experienced in this area of slate finance and were in the midst of completing a
12 similar refinancing for another slate deal (which went on to successfully close that year). In the
13 same time period, Citi told Aramid that it was in discussions with several parties interested in taking
14 over its position, but that it was unable to agree upon pricing with those parties. In the third quarter
15 of 2011, when Aramid continued to follow up with Citi to discuss further options, Citi demurred,
16 saying it had recently been approached by one (unidentified) third party in particular, whom it
17 would only describe as a “very large hedge fund.” Only once the deal closed did Citi reveal to
18 Aramid that, according to Citi, Citi had, in fact, formally asked the “unidentified” third party if Citi
19 could reveal that party’s identity to Aramid. According to Citi, the potential buyer unequivocally
20 said “no” and let it be known that if Citi did, it would materially jeopardize the negotiations.” Citi
21 kept mum. Only after the deal had been executed did Aramid learn that the buyer was Fortress, the
22 same entity that had previously been granted around-the-clock unlimited access to Aramid’s
23 confidential information related to Beverly. Citi made critical representations to Aramid during this
24 period, including that based on its conversations with Sony, Citi expected the buyer to assume the
25 obligations under the FAL because Sony would insist upon a continuation of the Beverly Slate,
26 including Citi’s critical backstop of production funding resources via the FAL, through the entire

27 _____
28 ¹⁹ Provided, however, that all \$525 million of the commitment was not outstanding *at any one time*.

1 picture submission and funding terms.

2 40. Although Fortress had earlier broken off its talks with Aramid without
3 submitting a bid for the Aramid portfolio, Fortress found a clever way to keep Aramid "under
4 surveillance" in the run-up to the heist. In classic heist movie parlance, this preparatory period
5 would be what is known as "casing the joint." It began with Fortress seeking false accreditation to
6 once again get an insider's look at the Aramid position in the Beverly Slate. In December 2010,
7 Fortress accepted an "advisory" mandate to KBC, a Belgian bank which had provided loans to some
8 of Aramid's European investors. Many so-called "Fund of Funds" investors, including several of
9 Aramid's investors, used this type of loan to increase the amount of capital they had to deploy, and
10 KBC was a well-known "leverage provider" in this space. In some cases, KBC even acted as the
11 shareholder of record for funds to which it extended such loans – an added service, not unlike
12 handling deposits or providing short-term cash management for a major client. In January 2011,
13 KBC requested that it be allowed to attend an Aramid investor meeting in London on the basis that
14 it was a shareholder. KBC had never before attended a shareholder meeting nor communicated
15 with the Fund or its advisors. This time, however, KBC not only requested that it be allowed full
16 rights to attend the meeting (and take part in any votes), but it also requested special permission for
17 Mike Campbell of Fortress to attend. Campbell had come to Fortress from DBZwirn and, like
18 Schnider, Campbell was one of the few executives at Fortress involved with media and
19 entertainment assets. Furthermore, in March 2011, KBC representatives, led by Patrick Diaz, an
20 employee of Fortress, asked Aramid to allow them to review a report prepared by The Salter Group
21 in February 2010 describing the projected cash flows of each asset in the Aramid portfolio, which
22 Aramid agreed to do, after KBC executed a separate NDA with Salter. In two separate discussions,
23 one in person at the Aramid offices in London, and another via teleconference, Mr. Diaz from
24 Fortress led the questioning and asked detailed questions about each of the assets in the portfolio
25 and specifically focused in the second discussion on Aramid's position in the Beverly Slate deal.
26 During this call, Aramid gave Fortress detailed information on the status of the Beverly Slate,
27 including updates on the performance of pictures that had been co-financed since The Salter
28 Group's report had been issued, Aramid's expectations on how many pictures Beverly would

1 ultimately co-finance, and timing expectations related to when those pictures would be funded.
2 Though Fortress is one of the world's largest funds with \$14 billion in assets and thousands of
3 employees, on information and belief, it has fewer than six senior executives whose full-time job is
4 to pursue or manage investment and/or lending opportunities in the areas of media and
5 entertainment, and these six professionals are in regular contact with each other. Though Fortress
6 deliberately used different entities along the way – e.g., a new shell company to receive the notes
7 from Citi and Fortress Investment Group to conduct due diligence on Aramid – on information and
8 belief, the confidential information about Aramid and the Beverly Slate transaction was made
9 available, shared and/or discussed among the extremely limited group of professionals at Fortress
10 evaluating media and entertainment deals, as well as with the senior executives of the company who
11 sat on the investment committee and ultimately sanctioned the conduct that is the subject matter of
12 this Complaint. Plaintiffs allege that, without access to what Fortress's advisor referred to as
13 Aramid's important and deal-dissecting "thoughts" on the Beverly Slate (as well as critical
14 underlying data related to the Beverly Slate's structure, funding mechanics, operating covenants,
15 general restrictions and performance to date), including multiple detailed question and answer
16 sessions about the deal, no third party could have pulled off what the Defendants did. As an added
17 protection, Fortress dispatched another executive, Henry Winterstern, to conduct negotiations with
18 Citi – an executive who, strangely, had not been the one to look at other slate opportunities (that
19 was Schnider) and was not on the KBC calls (that was Diaz), but who was, importantly, an old
20 friend from college days of Fortress founding partner and co-chairman Pete Briger, to whom all of
21 the Fortress executives involved with Aramid ultimately reported.

22 41. In the course of 2011, the pressure on Fortress to generate returns grew
23 considerably. First, Fortress was steadily acquiring new capital throughout the year, money which
24 sits and earns a "zero" until Fortress puts it to work. By the end of 2011, Fortress's credit-oriented
25 funds – the ones ultimately responsible for the activity in buying and/or financing secondary trades
26 in the motion picture slate vehicles – had taken in \$800 million in new capital in the first ten months
27
28

1 of the year to deploy in their credit-oriented funds.²⁰ As Fortress's then-CEO Dan Mudd put it in a
2 conference call with analysts on November 3, 2011, the majority of opportunities for the Fortress
3 credit funds were to come through the forced "deleveraging" of banks (e.g., Citi) *and* corporate
4 borrowers (which categorically includes the Beverly Slate):

5 "As we look at it, you think about what we have to get through in order to
6 get to a more stable foundation for longer growth are kind of 4 things.
7 First of all, the deleveraging has to continue and accelerate. The bad
8 assets that are out there really can't be wished away. We did an analysis
9 of this and to date, among probably 10 or 12 institutions, about \$3 trillion
10 worth of asset dispositions have been announced, but not consummated.
11 We think there's an additional \$5 trillion to \$10 trillion that will have to
12 happen before we get to an appropriate level of deleveraging. Following
13 the deleveraging, typically in these cycles, you see a large scale
14 restructuring. That's got to be completed above this next large wave of
15 maturing debt. In the next 3 to 5 years, over \$5 trillion of corporate debt
16 has to mature with nearly \$3 trillion in commercial real estate loans
17 maturing, over \$1 trillion in LBO financing coming due. And there's a
18 dearth of supply in terms of completing those refinancings. So I think in
19 that void of high demand, spiking refinancings and the lack of supply,
20 there will be terrific opportunities for us to get control of assets using the
21 operationally sound companies that we've got out there operating."

22 Despite Fortress's success in raising capital and identifying "de-leveraging opportunities," its credit
23 funds reported a 45% *drop* in third quarter profits compared to the previous year.²¹ It was against
24 this backdrop of intense pressure to put new capital to work *and* improve performance that Fortress
25 readied its assault on the Beverly Slate structure. These developments – the pressure on Fortress
26 generally and the window of opportunity within the Beverly Slate structure – were inexorably
27 converging.

28 **ACT II: CRACKING THE SAFE AND SPLITTING THE LOOT**

A. Aramid Relied on the Beverly Slate Deal's Built-In Safeguards Against Termination

42. From the very start, as a holder of mezzanine debt, Aramid necessarily relied
on how difficult it would be to simply "terminate" the Beverly Slate deal. Citi can syndicate
hundreds of securities offerings each year, with multiple tiers of capital such as senior, mezzanine

²⁰ As indicated during Fortress's third quarter conference call with analysts in November 2011.

²¹ As reported by Bloomberg News on November 3, 2011.

1 and equity. Citi's standard documentation for such offerings has been finely honed over the years,
2 tightened up with the benefit of counsel and lessons learned from decades of observing how courts
3 have adjudicated related legal disputes. Revisions and edits to such standard documentation are
4 difficult, if not impossible, to impose on such an industry heavyweight. As a consequence, the
5 principal element to be negotiated in such deals is the commercial deal at the heart of the
6 proposition (such as the amount of principal, the rate of interest and the terms upon which payment
7 will be due either in cash or "in kind"). Perhaps more importantly, counterparties to these offerings
8 are much more reliant on both the implied covenant of good faith and fair dealing and the natural
9 protections built into the design of the structure (such as, for instance, defined restrictions on the
10 permitted uses of cash or the circumstances in which distributions may be made to a particular tier
11 of capital). In the case of the Beverly Slate, these were especially important. There was no "easy"
12 way to simply knock out Citi, buy their notes and shut down the deal, but this is exactly the heist
13 that Fortress pulled off, based on the specially-obtained knowledge which no other parties outside
14 the deal had, and which would consummately obliterate Aramid's position. In order to both
15 purchase Citi's notes and shut down the deal, Fortress had to overcome the following hurdles:

16 (a) Fortress needed the noteholders to consent twice -- once on behalf of
17 the Class A Notes and once on behalf of the Class B Notes.

18 (b) Sony had to separately consent, which meant convincing Sony to
19 forego the benefit of the \$525 million FAL which, according to Citi's account to Aramid, Sony had
20 already told Citi it would not do.

21 (c) Relativity would have to consent, which meant convincing Relativity
22 and Kavanaugh to forfeit millions of dollars of producer fees and gross participations on additional
23 motion pictures.

24 (d) Finally, whoever stepped into Citi's shoes as the guarantor under the
25 FAL would be required under the contracts to possess a short-term debt rating of "A-1" or higher by
26 Standard & Poor's, or "P-1" or higher by Moody's, as well as a long-term debt rating of "A+" or
27 higher by Standard & Poor's and "A-1" or higher by Moody's -- no easy feat from a timing
28 perspective for a company that wasn't *already* so rated. At the time the original deal closed, this

1 restriction gave comfort to Sony that the FAL couldn't be handed off to just anyone and it equally
2 gave comfort to investors that the structure was not one meant for or likely to be subject to sudden
3 "roster changes." Restricting potential buyers of Citi's position in the Beverly Slate to companies
4 with certain minimum ratings by major rating agencies essentially narrowed the field of potential
5 buyers to other banks. This provided material assurance to Aramid that the slate would go its full
6 distance, since Aramid could reasonably rely on major banks in a top credit bracket with Citi to not
7 take an assignment of a senior loan only to shut it down and reap profits.²² But that is exactly what
8 funds like Fortress – which does not possess the requisite credit rating to step into Citi's shoes under
9 the FAL – try to get away with, particularly when profits are flagging.

10 **B. Aramid Also Relied on Assurances That the Slate was Moving Forward**

11 43. On September 30, 2011, in response to Plaintiffs' repeated requests, the first
12 and only quarterly conference call with noteholders of the Beverly Slate was held. During the call,
13 Aramid and Citi were told by Relativity that two new films had been submitted by Sony and
14 *accepted for co-financing* by Beverly: "I Hate You Dad," a comedy starring Adam Sandler (which
15 has since been re-titled "Donny's Boy"), and "21 Jump Street," a remake of a popular 1980s
16 television series. On that call, Aramid requested the "Submission Packages" for the newly selected
17 films, which consisted of information compiled by Sony upon which Relativity based its acceptance
18 or rejection of films in its role as Film Selection Agent. In a separate call with Plaintiffs later that
19 same day, Citi informed Plaintiffs that Citi had projected that the Beverly Slate would be able to co-
20 finance 8-10 additional motion pictures. Plaintiffs also spoke separately to representatives of
21 Relativity, who stated that they anticipated that the Beverly Slate would be able to co-finance at
22 least five more films and possibly more, but that their projections depended heavily on the
23 performance assumptions and the percentage of co-financing to be provided on such motion
24 pictures. Relativity further assured Plaintiffs, however, that their models showed no problem
25 funding "I Hate You Dad," "21 Jump Street" and "Anonymous," a film that had been submitted and
26

27 ²² This underlying commercial comfort only grew in the course of the global credit crisis and its
28 aftermath, as the chances of major, regulated banks (who borrow their own money directly from the
federal government) seeking to pull off a heist like this became unthinkable.

1 approved previously for co-financing.

2 44. Such additional films were critical to the Beverly Slate's success. By
3 enlarging the slate as originally contemplated, the additional films would give the investors
4 additional precious "at bats," increasing the odds of the slate including one or more performance-
5 lifting "hits," which would in turn increase the likelihood that investors in subordinated capital
6 positions such as Aramid's would be able to collect the monies due on their notes.²³ In fact, as late
7 as November 11, 2011 – only a little more than a month before the deal with Fortress closed and
8 when the Defendants were almost certainly deeply involved in negotiations – Relativity finally (for
9 the first time ever) complied with Aramid's request for the "Submission Packages" and they were
10 delivered via email to Aramid, indicating that the selected pictures were locked for financing and
11 that the Beverly Slate was moving ahead as noted in the September 30th conference call.

12 45. Plaintiffs relied on these assurances they had received from Relativity in
13 proceeding with business as usual. Had Plaintiffs known that at the same time Citi and Relativity
14 were assuring them that the co-financing of additional motion pictures would continue, Relativity
15 was in the home stretch of a covert operation to terminate the slate early, Plaintiffs would have had
16 several viable options available to them. For example, Plaintiffs could have provided an alternate
17 buyer of Citi's notes (one that would preserve and expand the slate), rather than abort it.²⁴ Aramid
18 had repeatedly demonstrated its ability to do just that, bringing in Bank of America and J.P. Morgan
19 to refinance another slate investment in April 2011. In fact, on Relativity's other Beverly slate deal
20 with Universal – one where it had no outside investors to worry about – Relativity did precisely
21 that. When the Universal-Beverly slate severely underperformed, Relativity arranged \$300 million
22 in senior re-finance from Comerica and Union Bank with which to pare down Elliott's \$500 million
23 exposure *and* Relativity successfully negotiated an extension of the picture submission term with
24 Universal, creating a larger pool of motion pictures in the slate. Put another way, when faced with a

25 _____
26 ²³ All slates go through ups and downs and Aramid had experienced this in other deals, witnessing
performance dips or troughs later reversed or "corrected" in due course.

27 ²⁴ To this day, Aramid has and had a number of backers who would have provided support for an
28 Aramid-led alternative in these circumstances and Aramid intends to prove this at trial.

1 similar situation for its own account only, Relativity did what it took to get itself more “at bats.”
2 Alternatively, Plaintiffs could have sought to take over Citi’s position themselves and extend the
3 deal with Sony. At worst, Plaintiffs could have chosen to liquidate their position at a price below
4 what it was worth but greater than “zero,” which is what they were left with after the Beverly Slate
5 was terminated early. Each of these options were available to Plaintiffs and could have been
6 pursued if not for Plaintiffs’ reliance on Relativity’s assurances.

7 **C. Fortress Convinced Sony and Relativity to Consent to Early Termination**

8 46. Like any practiced safecracker, Fortress patiently studied and manipulated
9 each tumbler in isolation. First, Fortress negotiated with Citi, seeking legal cover under a separate
10 NDA with Citi and sending in the decoy Winterstern to do the negotiating. While these
11 negotiations were ongoing, Citi had represented to Plaintiffs that Citi was prevented by Fortress
12 from negotiating “in the open” (*i.e.*, with Aramid knowing what was going on). During this same
13 time period, Citi also gave Aramid repeated assurances that, if a deal with the then-undisclosed
14 buyer came to pass, that party would assume the obligations of the FAL (meaning Aramid had
15 nothing to worry about). This meant, based on the analytics Citi had performed, that at least
16 another 8 to 10 additional Sony motion pictures would be co-financed by Beverly. At some point
17 during the negotiations between Fortress and Citi, however, Plaintiffs are informed and believe that
18 Fortress found the right combination of financial and other incentives to extract Citi’s agreement to
19 terminate the FAL, the details of which Citi deliberately did **not** share with Aramid, but which will
20 become apparent during discovery.

21 47. Upon information and belief, in order to obtain Sony’s consent, which was
22 also necessary to cut short the Submission Term under the Co-Financing Agreement **and** to
23 terminate the FAL – something Sony had previously refused to do for Citi²⁵ – Fortress had to find a
24 sufficiently appealing economic incentive or combination of incentives. Upon information and
25 belief, by laying in wait until the Beverly Slate was nearing the end of its Submission Term (at
26 which time the FAL would also approach its expiration – a tactic developed by Fortress based upon

27 _____
28 ²⁵ According to what Citi has represented to Aramid.

Aramid's "thoughts" on the Beverly Slate obtained while doing fake diligence under the NDA), Fortress convinced Sony to end the deal early. Upon information and belief, Fortress furnished financial incentives to induce Sony's agreement to terminate early the Submission Period and cut short the number of pictures to be co-financed by the Beverly Slate. Specifically, Plaintiffs are informed and believe that Sony and Fortress agreed that Sony would pay Beverly a maximum of \$214 million, which would immediately allow Sony to reduce the overall payments to which Beverly was entitled by \$6 million or more as relates to "first cycle" exploitation (*i.e.*, the first ten years of a film's exploitation), and as much as \$216 million in savings to Sony on payments otherwise due to Beverly for "subsequent cycle exploitation" (*i.e.*, the next 20 years of exploitation), which includes things such as television re-licensing and home video sales and/or "digital exploitation" on a variety of platforms during the 20-year period following the first ten years of a film's exploitation. In addition, Plaintiffs further allege on information and belief that Fortress agreed with Sony to forgo any audit rights Beverly investors had related to Sony-issued reporting and/or statements and also agreed to forgo Beverly's rights associated with co-financing any of the sequel or derivative works based on successful films in the Beverly Slate. What this means in practice is that Sony no longer has to share the upside on potentially lucrative sequels to films such as "Grown Ups," "Paul Blart: Mall Cop" and "Salt" with Beverly if and when such sequels are produced, an inducement worth additional millions to Sony. Each of these inducements was important to Sony, which had just completed a difficult third quarter of 2011 in which its operating income was cut almost in half from the previous year.

"Next is the Pictures segment, sales increased 8% and operating income of ¥4.7 billion was recorded, **a decrease of ¥4 billion year-on-year**. Sales increased primarily due to the increase in theatrical revenue, reflecting year-on-year increase in a number of films released, and higher television revenues from U.S. network programs. **Operating income decreased significantly**, this was mainly due to an increase in marketing costs in support of the greater number of theatrical releases in the quarter."

"Sony Corporation (SNE) F3Q11 Earnings Conference Call," February 2, 2012 (emphasis added).

48. In the eventual December 16, 2011 amendment to the Co-Financing Agreement terminating the Submission Term (the "Co-Financing Amendment") – one of many documents executed as part of Defendants' pre-Christmas raid – Sony required Beverly to clear

1 Sony's conscience (and to shield Sony from potential fallout from the pending transaction) by
2 affirmatively representing to Sony that "[t]here are no documents or agreements to which Beverly
3 or [RMH] is a party by which Beverly or [RMH] is bound which grants any contractual rights or
4 remedies to the holders of Class B Notes ... which ... affect Studio's rights under the Co-Financing
5 Agreement as amended hereby." The only holder of a Class B Note which was not a party to the
6 December 16, 2011 amending transactions with Fortress and therefore the only party which could
7 have been the object of concern to Sony, was Plaintiff AGT.

8 49. All that remained was to acquire Relativity's consent. On information and
9 belief, Relativity's consent was an issue which money could readily solve, given the desperate state
10 of Relativity's finances. Plaintiffs are informed and believe that since at least late 2011, Relativity
11 has struggled to meet its basic obligations, and has struggled to maintain the integrity of its
12 operations as (i) most of its key executives voluntarily departed; (ii) its principal backer ended its
13 support for the company; (iii) substantially all of its incoming cash was pledged to emergency
14 lenders (including, most recently, Colbeck); and (iv) Relativity had genuine problems meeting
15 payroll in the latter half of 2011 – something which trickled into public view beginning in
16 November 2011. On November 12, 2011, *The Los Angeles Times* described Relativity as "tight on
17 cash and losing principal backer" following "a series of box office disappointments," stating that the
18 company finds itself "at a crossroads." On January 19, 2012, Nikki Finke's *Deadline Hollywood*
19 blog reported that Relativity "has begun a process of laying off staffers from the operations and
20 marketing teams." As set forth below, Fortress provided Relativity with at least \$14.5 million in
21 desperately needed cash in order to buy Relativity's consent to early termination of the Beverly
22 Slate.

23 **D. Splitting the Loot**

24 50. Plaintiffs are informed and believe that Fortress agreed to a deal in principle
25 with Citi in or around October 2011 to obtain 100% of Citi's Class A Notes and an amount equal to
26 51% of all outstanding Class B Notes for approximately 50 cents on the dollar. As of December 19,
27 2011 (the funding date of the Fortress transaction), the outstanding senior balance on the Class A
28 Notes was \$226,724,422.26. On information and belief, Fortress therefore paid on the order of 50%

of that amount, or approximately \$113.5 million, to acquire all of the outstanding Class A Notes and (at no additional cost) a simple majority of the Class B Notes. Assuming Fortress could shut down future funding obligations by surpassing the many hurdles described above, this agreement alone set Fortress up to make a gross profit of approximately \$113.5 million.²⁶

51. Upon information and belief, in negotiating with Sony, Fortress insisted upon ending the Submission Term early so that no additional cash would leak out of the system (e.g., to make films, as was the agreed and stated purpose of the funds under the documents). Upon information and belief, in exchange for entering into the Co-Financing Amendment, Fortress allowed Sony to cap the amount owed to Beverly, resulting in a \$6 million savings to Sony related to “first cycle” exploitation (*i.e.*, the first ten years of a film’s exploitation), and as much as \$216 million in savings to Sony on payments otherwise due to Beverly for “subsequent cycle exploitation” (*i.e.*, the next 20 years of exploitation), which includes things such as television re-licensing and home video sales and/or “digital exploitation” on a variety of platforms during the 20-year period following the first ten years of a film’s exploitation. The value of these “subsequent cycle” rights has increased considerably over the past year, due in large part to the emergence of non-exclusive Subscription Video on Demand (“SVOD”) services offered by companies such as Netflix and Amazon. Netflix alone spent more than \$1 billion in 2011 licensing content from rights holders for SVOD.

52. All that remained to open the safe and steal the money was to turn the dial and land on the right number which would convince Relativity to go along with the scheme. That number, as it turns out, was \$14.5 million.²⁷ This is the amount, Plaintiffs are informed and believe, that Fortress paid to Relativity – at this point a company fighting for its very existence – in order to buy Relativity’s (and its subsidiaries’) consent. An early termination of the deal meant that

²⁶ The figures cited are approximate because Fortress and Citi have not disclosed the transaction documents.

²⁷ In fact, it was at least \$14.5 million. Plaintiffs are unaware as to whether Fortress made other payments or transferred other consideration to Relativity, but intend to examine the issue in discovery.

1 Relativity would forego its “producing fees” and gross participations on future co-financed pictures.
 2 Given that Citi’s models showed anywhere from another 8-10 pictures being funded absent
 3 Fortress’s interference and Relativity had advised Plaintiffs that at least five more pictures would be
 4 funded, this meant Relativity would potentially be giving up anywhere from \$15-30 million in
 5 additional income. On information and belief, having been shut off by Elliott in the course of 2011
 6 and facing an increasingly acrimonious conflict with Elliott over various deals, Relativity agreed to
 7 accept immediate cash from Fortress while giving up the potential for greater returns in the future.
 8 In essence, Relativity was creating the circumstances in which Relativity, as a “sell-out” gross
 9 participant, would profit handsomely, while investors who risked real money would lose big – an
 10 outcome which is a far cry from the “better-aligned-than-thou” stories Kavanaugh had been telling
 11 Hollywood audiences. “Our motto from day one,” Kavanaugh told a packed room at Variety’s
 12 “Future of Film Summit” in 2011, “was always that the idea of gross participation doesn’t make
 13 sense. ... And the reason they don’t make sense is that you’re basically saying, ‘Even if I lose
 14 money I’m going to pay you a bonus.’ And there’s really no other business that we could find that
 15 does that.” As Kavanaugh had put the same point to the Hollywood Reporter several weeks earlier:
 16 “A business where I can lose \$20 million but have to pay a \$20 million bonus doesn’t make any
 17 sense.”²⁸

18 53. Specifically, Plaintiffs are informed and believe that Relativity received a
 19 \$6.5 million cash payment from another Fortress entity, Defendant CF Film Finance, which
 20 Plaintiffs allege, upon information and belief, is a wholly-owned subsidiary of Fortress, in exchange
 21 for Relativity’s consent to the transfer of the Class A and B Notes to CF Film Finance. In addition,
 22 Relativity’s wholly-owned subsidiary Relativity Distribution entered into a loan agreement with
 23 Fortress Credit Corp. dated December 16, 2011, which provides for an interest-free loan to
 24 Relativity Distribution in the amount of \$8,083,862.98. The loan was to be issued in full on the
 25 closing date of the Fortress acquisition, December 16, 2011, with repayment due in 30 months but
 26 secured only by Relativity Distribution’s entitlement to “distribution fees” of 2% of the gross

27 _____
 28 ²⁸ *The Hollywood Reporter*, Sep. 29, 2011.

1 receipts from the Sony films co-financed by Beverly. On information and belief, no other contracts
2 or assets of Relativity Distribution were put up as collateral for the loan. Relativity accordingly
3 received a total of approximately \$14.5 million in up-front cash payments in exchange for its
4 consent to terminate the slate early.

5 54. Adding up the numbers, here is how the heist paid off for each party
6 involved, on information and belief.

7 (a) Citi – whose mandate was to liquidate its position – happily accepted
8 approximately \$113.5 million for notes with an outstanding senior balance of \$226 million.

9 (b) Sony received a \$6 million payoff in the form of a cap on the “first
10 cycle” payments to Beverly and over \$200 million in additional savings in the future as a result of
11 not having to share proceeds from “subsequent cycle” exploitation and sequels to successful films
12 included in the Beverly Slate. Plaintiffs are informed and believe that as of September 30, 2011, the
13 amount of Distributable Receipts due to Beverly from the cash generated by the slate of pictures
14 was \$185 million. Plaintiffs are further informed and believe that Sony projected as much as \$25
15 million due to Beverly from “Picture Subsidies,” which are the amounts a motion picture generates
16 from tax incentives and other “soft money” sources. Finally, Plaintiffs are informed and believe
17 that Sony offered Beverly a capped participation in the Adam Sandler comedy “I Hate You Dad,”
18 which would generate up to an additional \$10 million for Beverly. The total amount Beverly could
19 have been expected to receive from Sony was therefore \$220 million. Fortress agreed to cap the
20 total amount Sony would pay Beverly at \$214 million, immediately saving Sony at least \$6 million
21 on these “first cycle” payments to Beverly. The \$214 million cap on payments also eliminated
22 Sony’s obligation to make future payments to Beverly out of funds received from “subsequent
23 cycles” of exploitation in the future. According to at least one model prepared by Citi (and vetted
24 by The Salter Group), the amount of cash generated by the Beverly Slate in “subsequent cycles”
25 was projected to be approximately \$438 million. Based on that figure – which does not even
26 account for the increased value of SVOD rights over the past year – Sony stands to save
27 approximately \$216 million in future payments to Beverly as a result of its agreement to go along
28 with Fortress’s scheme.

(c) Fortress, having masterminded the break-in and the switcheroo, booked a minimum gross profit of approximately \$96.1 million (\$194 million to be received from Sony, plus \$15.6 million currently available in a Beverly collection account, less the estimated \$113.5 million paid to Citi).

(d) Deducting from the approximate \$96.1 million in gross profit the \$14.5 million paid to Relativity, Fortress stood to make approximately \$81.6 million from “knocking over” the Beverly Slate – an amount representing more than half of Fortress’s entire cash flow for the third quarter of 2011 – the one in which Fortress’s CEO touted its plans for boosting profits from “de-leveraging opportunities.” (Fortress’s CEO, Daniel Mudd, resigned from Fortress on January 25, 2012 in order to focus his full attention on defending himself against a lawsuit brought by the Federal government for understating, while CEO of Fannie Mae, billions of dollars of the subprime loans held by the government-owned mortgage finance institution.)

55. Receiving the payments above necessarily meant destroying the value of Aramid’s investment because the capped amount of approximately \$214 million in future payments from Sony under the Co-Financing Amendment will be insufficient to satisfy all of the Class A Notes much less any of the Class B Notes, a fact that Fortress, Citi, Sony, Relativity and Kavanaugh were well aware of as they negotiated their various deals and deliberately did nothing to prevent (other than Sony insisting upon a representation and warranty from Beverly in the Co-Financing Amendment that Aramid has no claims *against Sony* – the veracity of which remains to be seen). At the same time Citi and Relativity were each separately assuring Aramid that the slate would continue. The damage to Aramid was, in fact, so obvious, that Fortress’s advisor, Fazio, when asked by Molner in a December 2011 email if she had advised Fortress on the deal, replied “no” and added (unprompted): “Did that trade kill your mezz?”

ACT III: ARAMID SEEKS JUSTICE

56. In carrying out their heist, the Defendants committed various legal wrongs. Fortress breached the three-year NDA it had entered into with Aramid when it used Aramid’s confidential information and educating “thoughts” about the Beverly Slate to structure its own

1 transaction to Aramid's detriment. In doing so, Fortress also breached the implied covenant of good
2 faith and fair dealing inherent in all agreements and commercial undertakings. Armed with full
3 knowledge of Aramid's contractual and economic relations as a result of its review of Aramid's
4 confidential information, including the appropriate time to approach Sony to terminate the deal,
5 Fortress intentionally and maliciously interfered with Plaintiffs' contractual relations when it
6 induced Sony and Relativity to terminate the Beverly Slate early. By representing to Aramid that
7 the deal was proceeding as planned while at the same time secretly agreeing to its early termination,
8 Relativity defrauded Aramid. The Defendants also participated in a fraudulent transfer of assets
9 which ensured that they would each receive a payout while leaving nothing for Aramid as a
10 mezzanine investor.

11 57. The effect of these acts was to reduce the value of Aramid's investment from
12 approximately \$44 million to zero, and Aramid has been damaged by at least that amount.

13 58. In seeking a jury trial to unravel this scheme and right these numerous
14 wrongs, Plaintiffs cannot help but quote an anonymous blogger on the classic hallmarks of heist
15 movies:

16 "The third act is the unraveling of the plot. The characters
17 involved in the heist will be turned against one another or one
18 of the characters will have made arrangements with some
19 outside party, who will interfere (often a wise underestimated
20 detective). Normally, most of or all the characters involved in
21 the heist will end up dead, captured by the law, or without any
22 of the loot."²⁹

23 **FIRST CAUSE OF ACTION**

24 **(Breach of Contract Against Fortress)**

25 59. Plaintiffs reallege and incorporate by reference each of the allegations of
26 paragraphs 1 through 58 above.

27 60. Fortress's conduct, as alleged above, constituted a breach of its obligations to
28 Aramid under the NDA. By signing the NDA, Fortress obtained access to a wide range of

²⁹ http://en.wikipedia.org/wiki/Heist_film.

confidential documents and information at a point in time that subsequently provided it with a critical planning advantage, including extensive information related to the nature, conditions and performance of Aramid's investment in the Beverly Slate which could not have been obtained at that time by other means. By virtue of its exclusive and confidential review, Fortress had access to voluminous information and sensitive details as to Aramid's investment in the Beverly Slate, including all of the Beverly Slate contracts, Aramid's confidential models and forecasts related to the Beverly Slate, and Aramid's summarized analysis of the deal's key funding, timing and selection parameters – in short, its key inner workings. Fortress and their advisors pored over the contracts and information furnished by Aramid; however, the key information Fortress needed was Aramid's analysis of the documents, in particular Aramid's insights into the Beverly Slate, its funding, selection and distribution mechanics (as well as other important restrictive covenants and operative details of how the parties to the deal "lived out" the transaction). Indeed, Fortress's expert advisors on its potential transaction with Aramid, Nan Logan and Laura Fazio, stated to Aramid in an email dated April 20, 2010 that "I have to admit it was a little difficult to work through the folders without prior knowledge of how the loans work" and "we look forward to your thoughts" with respect to "the challenges facing us valuing the Beverly asset." In response, Aramid provided extensive "thoughts" and analysis regarding the Beverly Slate to Fortress in multiple conversations over the course of several months. Aramid explained how the Beverly Slate deal worked to Fortress and helped Fortress "connect the dots" and make sense of the complicated series of agreements governing the Beverly Slate.

61. All of the confidential information, analysis and "thoughts" provided by Aramid to Fortress was subject to the NDA, which expressly provides that all such information will be used "only for the purpose of evaluating and negotiating the Proposed Transaction or the consummation of the Proposed Transaction ... and for no other purpose." Fortress breached the NDA by using the confidential information and analysis it obtained from Aramid in connection with its own investment in the Beverly Slate. Aramid's confidential "thoughts" and analysis – none of which could have been obtained from any other source – enabled Fortress to time, plan and execute its own investment in the Beverly Slate perfectly and structure the deal to ensure that it would profit

at Aramid's expense. Without this critical analysis, insider guidance and non-public information, Fortress would not have been able to structure the complex series of transactions that ultimately enabled it to pocket tens of millions of dollars – all at Aramid's expense.

62. Aramid fully performed all of the acts and conditions required to be performed on its part under the NDA, except to the extent that such acts or conditions were excused by reason of Fortress's breaches.

63. As a result of Fortress's improper use of Plaintiffs' confidential information in breach of the NDA, Fortress was able to structure and time its arrangements with the other counterparties to the Beverly Slate transaction in such a way that ensured a profit for Fortress at Aramid's expense. The value of the Class B Notes held by Aramid through its subsidiary AGT was reduced from \$44 million to zero. Plaintiffs have therefore been damaged by Fortress's breach in an amount to be proven at trial but no less than \$44 million.

SECOND CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Fortress)

64. Plaintiffs reallege and incorporate by reference each of the allegations of paragraphs 1 through 63 above.

65. The NDA is a common commercial agreement implicitly governed by the covenant of good faith and fair dealing. Without it, NDAs would be subject merely to who had more leverage when agreements were drafted. Fortress not only explicitly agreed to use the confidential information for no other purpose than the one described in the NDA, by entering into the NDA under the laws of the state of California, it covenanted in good faith to deal with Aramid honestly and fairly and cooperate with Aramid in the performance of the NDA and refrain from doing anything to deprive Aramid of the benefits and protections afforded to it by the NDA and upon which Aramid reasonably relied.

66. Fortress breached the implied covenant of good faith and fair dealing by, among other things, first gaining access (under false pretense) to Plaintiffs' confidential documents and information, including extensive information related to Aramid's investment in the Beverly Slate, as well as (without limitation) the underlying structure, key timing considerations and the

performance profile, in connection with its own dealings with the Beverly Slate counterparties and the financial arrangement it ultimately entered into with them.

67. As a result of Fortress's breach of the implied covenant of good faith and fair dealing, Plaintiffs have suffered damages. The value of the Class B Notes held by Aramid through its subsidiary AGT has been reduced from \$44 million to zero. Plaintiffs have therefore been damaged by Fortress's breach in an amount to be proven at trial but no less than \$44 million.

THIRD CAUSE OF ACTION

(Intentional Interference with Contractual Relations Against Fortress and CF Film Finance)

68. Plaintiffs reallege and incorporate by reference each of the allegations of paragraphs 1 through 67 above.

69. On or about April 16, 2008, Aramid purchased \$22 million worth of Class B Notes in the Beverly Slate from Citi. In connection with its investment, Aramid entered into a Note Purchase Agreement and various other agreements. Pursuant to those agreements, Aramid is entitled to receive payments of principal and interest on the Class B Notes. Those payments are to be funded by the proceeds of motion pictures co-financed by Beverly. Aramid's receipt of such payments is dependent upon the success of the slate of motion pictures co-financed by Beverly.

70. Fortress and CF Film Finance knew of the Note Purchase Agreement, its terms and conditions and those of other agreements entered into by Aramid in connection with its purchase of the Class B Notes. Fortress and CF Film Finance further knew the value of Aramid's Class B Notes and that the value of the notes and Aramid's ability to recover the principal and interest due on the notes was contingent upon Beverly co-financing as full a slate of motion pictures as the Co-Financing Agreement entered into between Sony and Beverly would allow for and that by interfering in the sequence of pictures to be funded and released, Fortress and CF Film Finance would materially damage, if not utterly destroy, Aramid's investment.

71. Despite the knowledge that their contemplated transaction would directly damage Aramid's property, prior to completing their transaction with Citi to acquire Citi's interest in Beverly, Fortress and CF Film Finance secretly brokered separate deals with Sony and Beverly by which Sony and Beverly agreed to amend the Co-Financing Agreement so that the transaction,

including the process of film selection, would be terminated early. As a result of these transactions, pursuant to which Sony and Beverly were materially induced by Fortress and CF Film Finance to take actions they otherwise would not pursue without material inducement, Aramid's contractual entitlement to payments on the Class B Notes was terminally interdicted.

72. As a result of Fortress and CF Film Finance's improper, unlawful and unjustified conduct and the resulting disruption of Aramid's contractual relationships, Plaintiffs have suffered damages. The value of the Class B Notes held by Aramid through its subsidiary AGT has been reduced from \$44 million to zero. Plaintiffs have therefore been damaged by Fortress and CF Film Finance's unlawful interference in an amount to be proven at trial but no less than \$44 million.

73. The aforementioned acts of Fortress and CF Film Finance were willful, malicious and fraudulent. Plaintiffs are therefore entitled to an award of exemplary and punitive damages.

FOURTH CAUSE OF ACTION

(Intentional Interference with Prospective Economic Advantage

Against Fortress and CF Film Finance)

74. Plaintiffs reallege and incorporate by reference each of the allegations of paragraphs 1 through 73 above.

75. On or about April 16, 2008, Aramid purchased \$22 million worth of Class B Notes in the Beverly Slate from Citi. Aramid's purchase of the Class B Notes created an ongoing economic relationship between Aramid and other entities involved in the Beverly Slate, including Sony, Beverly and RMH. Aramid was to receive payments of principal and interest on the Class B Notes, which were to be funded by the proceeds of motion pictures produced and released by Sony and co-financed by Beverly. Aramid's receipt of such payments was fundamentally dependent upon the success of the slate of motion pictures co-financed by Beverly.

76. Fortress and CF Film Finance knew about Aramid's economic relationship with the entities involved in the Beverly Slate. Fortress and CF Film Finance further knew the value of Aramid's Class B Notes and that the value of the notes and Aramid's ability to recover the

principal and interest due on the notes was contingent upon the Beverly Slate co-financing the full slate of motion pictures contemplated by the Co-Financing Agreement and that Aramid detrimentally relied on both the intent of the parties and the design of the transaction in order to co-finance and release as many pictures as possible within a full, five-year time period.

77. Despite the knowledge that their contemplated transaction would directly damage Aramid's property, prior to completing their transaction with Citi to acquire Citi's interest in the Beverly Slate and with the wrongful misuse of Plaintiffs' confidential information in breach of the NDA, Fortress and CF Film Finance secretly brokered separate deals with Sony and Beverly by which Sony and Beverly agreed to amend the Co-Financing Agreement so that the sequence of selecting, co-financing and releasing "Designated Pictures" was terminated early. As a result of these deals, pursuant to which Sony and Beverly were materially induced by Fortress and CF Film Finance to act as they did, Aramid's economic relationship with the parties was purposefully eclipsed, including its ability to collect the payments to which it and the parties had carefully agreed Aramid was entitled under the Class B notes.

78. As a result of Fortress and CF Film Finance's improper, unlawful and unjustified conduct and the resulting disruption of Aramid's economic relationship, Plaintiffs have suffered damages. The value of the Class B Notes held by Aramid through its subsidiary AGT has been reduced from \$44 million to zero. Plaintiffs have therefore been damaged by Fortress and CF Film Finance's unlawful interference in an amount to be proven at trial but no less than \$44 million.

79. The aforementioned acts of Fortress and CF Film Finance were willful, malicious and fraudulent. Plaintiffs are therefore entitled to an award of exemplary and punitive damages.

FIFTH CAUSE OF ACTION

(Fraud Against Relativity, RMH, Beverly and Does 1-10)

80. Plaintiffs reallege and incorporate by reference each of the allegations of paragraphs 1 through 79 above.

81. On September 30, 2011, Ramon Wilson acting as the agent of Relativity, RMH and Beverly (collectively referred to as the "Relativity Defendants"), informed Aramid that

two new films had been submitted by Sony and accepted for co-financing by Beverly: "I Hate You Dad" and "21 Jump Street." In separate conversations with Mr. Wilson, Aramid was further informed that the Relativity Defendants anticipated that Beverly would be able to co-finance no fewer than five more films, but that the actual number would depend on the fund's performance and the percentage of co-financing to be provided on such motion pictures. The Relativity Defendants further assured Plaintiffs that their models showed no problem funding "I Hate You Dad," "21 Jump Street" and "Anonymous," a film that had been submitted and approved previously for co-financing. In October of 2011, Plaintiffs received additional assurances from the Relativity Defendants that sufficient funding was available to co-finance what was then reasonably estimated as ranging between 5-10 more motion pictures. As late as November 11, 2011 – little more than a month before the deal with Fortress closed and when the parties were almost certainly deeply involved in negotiations unbeknownst to Aramid – the Relativity Defendants insisted that the slate was moving forward as planned and encouraged Plaintiffs to believe events at that time were "business as usual" by providing Plaintiffs with Submission Packages for new pictures that gave every impression the slate could and would continue as expected.

82. Throughout the time that the Relativity Defendants were making these representations and assurances to Aramid, Plaintiffs are informed and believe that the Relativity Defendants were negotiating with Fortress and Sony to terminate the entire transaction early in exchange for a \$14.5 million cash payment to the Relativity Defendants. This crucial fact was deliberately concealed from Aramid, and the representations made by the Relativity Defendants about the slate moving forward were knowingly false. The Relativity Defendants made these false representations with the intent to defraud Plaintiffs and collect millions in payments from Fortress. Because Fortress's identity as an investor and its intent to terminate the Beverly Slate transaction early were concealed from Plaintiffs, Plaintiffs were even more reliant on what should have been truthful representations and assurances being made to them by the Relativity Defendants. Had Plaintiffs known that the Relativity Defendants were in talks with Fortress to agree to terminate the transaction early, Plaintiffs would have objected and pursued one or more of the viable options that would have been available to them. Plaintiffs could have worked to provide an alternate buyer of

Citi's notes or otherwise restructure arrangements to the mutual satisfaction of the original parties to the transaction, just as Relativity had successfully done on the Universal-Beverly slate (when there were no "other" investors who might have presented an obstacle to doing so). Alternatively, Plaintiffs could have sought to take over Citi's position themselves and extend the deal with Sony. At worst, Plaintiffs could have chosen to liquidate their position at a price below what it was worth but greater than "zero," which is what they were left with after the Beverly Slate was terminated early. Each of these options were available to Plaintiffs and could have been pursued if not for Plaintiffs' justifiable reliance on the Relativity Defendants' fraudulent assurances.

83. As a result of the Relativity Defendants' fraud, Plaintiffs have suffered damages. The value of the Class B Notes held by Aramid through its subsidiary AGT has been reduced from \$44 million to zero. Plaintiffs have therefore been damaged by the Relativity Defendants' fraud in an amount to be proven at trial but no less than \$44 million.

84. The aforementioned acts of the Relativity Defendants were willful, malicious and fraudulent. Plaintiffs are therefore entitled to an award of exemplary and punitive damages.

SIXTH CAUSE OF ACTION

(Fraudulent Transfer, Cal. Civ. Code § 3439 *et seq.*, Against Fortress, CF Film Finance, RMH, Beverly and Does 1-10)

85. Plaintiffs reallege and incorporate by reference each of the allegations of paragraphs 1 through 84 above.

86. On or about April 16, 2008, Aramid purchased \$22 million worth of Class B Notes in the Beverly Slate from Citi. The issuer of the Class B Notes was RMH.

87. Aramid was to receive payments of principal and interest on the Class B Notes out of the proceeds of motion pictures produced and released by Sony and co-financed by Beverly pursuant to the Co-Financing Agreement entered into between Beverly (a wholly-owned subsidiary of RMH) and Sony.

88. As a result of Fortress and CF Film Finance's financial inducement of RMH, RMH's wholly-owned subsidiary Beverly agreed to amend the Co-Financing Agreement with Sony for the obvious benefit of Fortress and CF Film Finance. In doing so, Fortress, CF Film Finance,

1 RMH, Beverly and Does 1-10 gave up the right of Beverly to co-finance and receive proceeds from
2 the remaining motion pictures in the slate contemplated by the Co-Financing Agreement and further
3 relinquished the right to proceeds from the existing motion pictures in the Beverly Slate in excess of
4 the capped payment amount set forth in the Co-Financing Amendment. The value of those
5 foregone revenues cannot be measured with certainty because by terminating the transaction,
6 Fortress, CF Film Finance, RMH, Beverly and Does 1-10 not only precluded Plaintiffs from
7 receiving the benefit of revenues from identified pictures, but also from then-unidentified pictures
8 (whose ultimate value could have reasonably been increased if the deal were extended or amended
9 as Relativity had done in its sister deal). Although this sacrifice in value cannot be precisely
10 measured due to the willful misconduct of the Defendants, it means that Fortress, CF Film Finance,
11 RMH, Beverly and Does 1-10 cannot justifiably claim to have received equivalent value in
12 exchange for the transfer of those rights. Instead, they gave up hundreds of millions of dollars
13 worth of potential future returns which would have been distributed through the original "waterfall"
14 of proceeds to Citi and Aramid, both of whom were RMH's creditors under the notes.

15 89. At the time of the fraudulent transfer of the rights to co-finance additional
16 Sony motion pictures by each of Fortress, CF Film Finance, RMH, Beverly and Does 1-10, Beverly
17 and RMH were insolvent or were rendered insolvent as a result of the transfer. If not for Fortress,
18 CF Film Finance, RMH, Beverly and Does 1-10's fraudulent transfer, funds from the existing and
19 future films produced and distributed by Sony pursuant to the Co-Financing Agreement would have
20 been available to repay Plaintiffs. Because of the transfer, RMH will be unable to pay the principal
21 and interest on the Class B Notes issued to Aramid through its subsidiary AGT and the value of the
22 notes has been reduced from \$44 million to zero. Plaintiffs have therefore been damaged by
23 Fortress, CF Film Finance, RMH, Beverly and Does 1-10's fraudulent transfer in an amount to be
24 proven at trial but no less than \$44 million.

25 90. The aforementioned acts of Fortress, CF Film Finance, RMH, Beverly and
26 Does 1-10 were willful, malicious and fraudulent. Plaintiffs are therefore entitled to an award of
27 exemplary and punitive damages.
28

1 **SEVENTH CAUSE OF ACTION**

2 **(Aiding, Abetting and Inducing Fraudulent Transfer Against**

3 **Relativity, Lord and Does 11-20)**

4 91. Plaintiffs reallege and incorporate by reference each of the allegations of
5 paragraphs 1 through 90 above.

6 92. By reason of the acts and omissions alleged herein, Relativity, Lord and Does
7 11-20 aided, abetted and induced the fraudulent transfer alleged in the Sixth Cause of Action.
8 Relativity is the ultimate parent of both RMH and Beverly; Lord is the manager of both RMH and
9 Beverly. As such, Relativity, Lord and Does 11-20 were aware of and substantially assisted
10 Fortress, CF Film Finance, RMH, Beverly and Does 1-10 in carrying out the fraudulent transfer
11 alleged in the Sixth Cause of Action.

12 93. As a result of the fraudulent transfer aided, abetted and induced by Relativity,
13 Lord and Does 11-20, RMH will be unable to pay the principal and interest on the Class B Notes
14 issued to Aramid through its subsidiary AGT and the value of the notes has been reduced from \$44
15 million to zero. Plaintiffs have therefore been damaged by the fraudulent transfer in an amount to
16 be proven at trial but no less than \$44 million.

17 94. The aforementioned acts of Relativity, Lord and Does 11-20 were willful,
18 malicious and fraudulent. Plaintiffs are therefore entitled to an award of exemplary and punitive
19 damages.

20 **EIGHTH CAUSE OF ACTION**

21 **(Breach of Fiduciary Duty Against Relativity, RMH and Lord)**

22 95. Plaintiffs reallege and incorporate by reference each of the allegations of
23 paragraphs 1 through 94 above.

24 96. At the time of the fraudulent transfer alleged in the Sixth Cause of Action,
25 RMH and Beverly were insolvent. RMH is the sole member of Beverly and Relativity is the sole
26 member of RMH. Lord is the manager of both RMH and Beverly. Because RMH was insolvent, as
27 manager, officers, directors, or members of RMH, Relativity and Lord owed Plaintiffs, as creditors
28 of RMH, a fiduciary duty to act in Plaintiffs' best interests and not to do or suffer anything to harm

1 Plaintiffs. Likewise, as manager, officers, directors and members of Beverly, which was also
2 insolvent, RMH and Lord owed Plaintiffs a fiduciary duty to act in Plaintiffs' best interests and not
3 to do or suffer anything to harm Plaintiffs.

4 97. By reason of the acts and omissions alleged herein, Relativity, RMH and
5 Lord breached their fiduciary duties to Plaintiffs as creditors of RMH and Beverly.

6 98. Plaintiffs have suffered and will suffer damage as a direct and proximate
7 result of such breaches of fiduciary duty. The value of the Class B Notes held by Aramid through
8 its subsidiary AGT has been reduced from \$44 million to zero. Plaintiffs have therefore been
9 damaged by Relativity, RMH and Lord's breaches of their fiduciary duties in an amount to be
10 proven at trial but no less than \$44 million.

11 99. The aforementioned acts of Relativity, RMH and Lord were willful,
12 malicious and fraudulent. Plaintiffs are therefore entitled to an award of exemplary and punitive
13 damages.

14 NINTH CAUSE OF ACTION

15 (Aiding, Abetting and Inducing Breach of Fiduciary Duty Against 16 Fortress, CF Film Finance and Does 21-30)

17 100. Plaintiffs reallege and incorporate by reference each of the allegations of
18 paragraphs 1 through 99 above.

19 101. At the time of the fraudulent transfer alleged in the Sixth Cause of Action,
20 RMH and Beverly were insolvent. RMH is the sole member of Beverly and Relativity is the sole
21 member of RMH. Lord is the manager of both RMH and Beverly. Because RMH was insolvent, as
22 manager, officers, directors and members of RMH, Relativity and Lord owed Plaintiffs, as creditors
23 of RMH, a fiduciary duty to act in Plaintiffs' best interests and not to do or suffer anything to harm
24 Plaintiffs. Likewise, as manager, officers, directors and members of Beverly, which was also
25 insolvent, RMH and Lord owed Plaintiffs a fiduciary duty to act in Plaintiffs' best interests and not
26 to do or suffer anything to harm Plaintiffs.

27 102. By reason of the acts and omissions alleged herein, Fortress, CF Film
28 Finance and Does 21-30 aided, abetted and induced breaches of Relativity, RMH and Lord's

1 fiduciary duties to Plaintiffs. Fortress, CF Film Finance and Does 21-30 were aware of and
2 substantially assisted Relativity, RMH and Lord in carrying out the breaches of fiduciary duties
3 owed to Plaintiffs alleged in the Eighth Cause of Action.

4 103. Plaintiffs have suffered and will suffer damage as a direct and proximate
5 result of such breaches of fiduciary duty. The value of the Class B Notes held by Aramid through
6 its subsidiary AGT has been reduced from \$44 million to zero. Plaintiffs have therefore been
7 damaged by the fraudulent transfer in an amount to be proven at trial but no less than \$44 million.

8 104. The aforementioned acts of Fortress, CF Film Finance and Does 21-30 were
9 willful, malicious and fraudulent. Plaintiffs are therefore entitled to an award of exemplary and
10 punitive damages.

11
12 WHEREFORE, Plaintiffs pray for judgment against the Defendants, and each of
13 them, as follows:

14 1. On Plaintiffs' First Cause of Action for Breach of Contract Against Fortress:

15 (a) For damages in an amount to be proven at trial, including interest
16 thereon;

17 (b) For the costs of this action including, without limitation, reasonable
18 attorneys' fees as the prevailing party, as provided in the agreements at issue;

19
20 2. On Plaintiffs' Second Cause of Action for Breach of the Implied Covenant of
21 Good Faith and Fair Dealing Against Fortress:

22 (a) For damages in an amount to be proven at trial, including interest
23 thereon;

24 (b) For the costs of this action including, without limitation, reasonable
25 attorneys' fees as the prevailing party, as provided in the agreements at issue;

26
27 3. On Plaintiffs' Third Cause of Action for Intentional Interference with
28 Contractual Relations Against Fortress and CF Film Finance:

(a) For damages in an amount to be proven at trial, including interest thereon;

(b) For punitive damages;

(c) For the costs of this action;

4. On Plaintiffs' Fourth Cause of Action for Intentional Interference with Prospective Economic Advantage Against Fortress and CF Film Finance:

(a) For damages in an amount to be proven at trial, including interest thereon;

(b) For punitive damages;

(c) For the costs of this action;

5. On Plaintiffs' Fifth Cause of Action for Fraud Against Relativity, RMH, Beverly and Does 1-10:

(a) For damages in an amount to be proven at trial, including interest thereon;

(b) For punitive damages;

(c) For the costs of this action;

6. On Plaintiffs' Sixth Cause of Action for Fraudulent Transfer Against Fortress, CF Film Finance, RMH, Beverly and Does 1-10:

(a) For damages in an amount to be proven at trial, including interest thereon;

(b) For punitive damages;

(c) For the costs of this action;

7. On Plaintiffs' Seventh Cause of Action for Aiding, Abetting and Inducing Fraudulent Transfer Against Relativity, Lord and Does 11-20:

1 (a) For damages in an amount to be proven at trial, including interest
2 thereon;

3 (b) For punitive damages;

4 (c) For the costs of this action;

5
6 8. On Plaintiffs' Eighth Cause of Action for Breach of Fiduciary Duty Against
7 Relativity, RMH and Lord:

8 (a) For damages in an amount to be proven at trial, including interest
9 thereon;

10 (b) For punitive damages;

11 (c) For the costs of this action;

12
13 9. On Plaintiffs' Ninth Cause of Action for Aiding, Abetting and Inducing
14 Breach of Fiduciary Duty Against Fortress, CF Film Finance and Does 21-30:

15 (a) For damages in an amount to be proven at trial, including interest
16 thereon;

17 (b) For punitive damages;

18 (c) For the costs of this action;

19
20 10. On All Causes of Action as to All Defendants:

21 (a) For Plaintiffs' costs of suit;

22 (b) For such other and further relief as the Court deems just and proper.

23 DATED: February 8, 2012

JEFFER MANGELS BUTLER & MITCHELL LLP
STANLEY M. GIBSON
BRIAN M. YATES

24
25
26 By: 

STANLEY M. GIBSON

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